

REMARKS

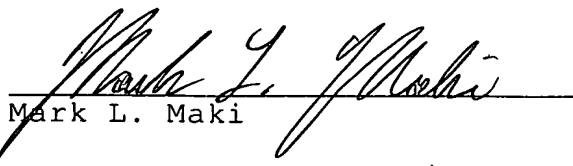
Applicant has comprehensively reviewed the claims and amended same to further clarify the invention being claimed. Withdrawal of the Section 112 rejection is respectfully requested.

As to the rejection of the claims, Applicant's corresponding patent application, namely EP 1 277 534, is cited against the claims under 35 U.S.C. §102(d). Applicant's published application is not believed to be a proper prior art reference that is useable to reject the claims and hence, withdrawal of the claim rejection is requested.

In particular, Applicant has issued European Patent EP 1 277 534 B1 which did not issue until November 3, 2004. A copy of the face page of this European patent is attached to this Response. Notably, INID code 45 indicates the issue date of November 3, 2004. Notably, this date is after the filing date of the present U.S. application. The Office Action, however, cites the publication date of January 22, 2003. This date is associated with INID code 43 which according to MPEP §901.05(b) merely indicates the printing date of an unexamined patent document on which no grant has taken place before the publication date.

According to MPEP §2135 and 2135.01, a published application is not a patent (see MPEP §2135.01(III)(B)). These MPEP sections set forth that an application must issue into a patent or have similar affect before it can be applied in a 35 U.S.C. §102(d) rejection. As indicated above, Applicant's cited '534 B1 patent was only published as an unexamined application on the January 22, 2003 publication date and hence, is not effective as a prior art reference. In view of the foregoing, withdrawal of the claim rejections is respectfully requested.

Respectfully submitted,


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Encl: Copy of cover page of EP 1 277 534 B1
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